

— EXHIBIT 3 —

Christina Melito, et. al. vs. American Eagle Outfitters
Deposition of Kara Bowes

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHRISTINA MELITO, CHRISTOPHER)
LEGG, ALISON PIERCE, and)
WALTER WOOD, Individually)
and on behalf of all others)
similarly situated,)
Plaintiff(s),)
vs.) NO. 1:14-cv-02440-VEC
AMERICAN EAGLE OUTFITTERS,)
INC., a Delaware corporation,)
AEO MANAGEMENT CO., a Delaware)
corporation, and EXPERIAN)
MARKETING SOLUTIONS, INC.,)
Defendant(s),)

* * * * *

DEPOSITION OF KARA BOWES
TAKEN ON BEHALF OF THE PLAINTIFFS/PUTATIVE CLASSES
IN OKLAHOMA CITY, OKLAHOMA
ON JUNE 14, 2017

* * * * *

REPORTED BY: JILL A. RESETAR, CSR

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1 APPEARANCES:

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EXHIBITS

18

19 (Exhibit Nos. 1 - 3 were previously marked in Brooke
20 Bowes' deposition.)

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22 NO. DESCRIPTION PAGE

23

24 4 Agreement. 42

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5 Text 47

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1 S T I P U L A T I O N S

2

3 It is hereby stipulated that the
4 deposition of KARA BOWES may be taken pursuant to the
5 Federal Rules of Civil Procedure and pursuant to
6 Notice on June 14, 2017, before Jill A. Resetar,
7 Certified Shorthand Reporter within and for the State
8 of Oklahoma.

9 It is stipulated that all objections to
10 questions, except as to the form of the question and
11 the responsiveness of the answer, may be made at the
12 time of trial, when said deposition is offered into
13 evidence.

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1 KARA BOWES,
2 of lawful age, being first duly sworn, deposes and
3 says in reply to the questions propounded as
4 follows:

5 * * * * *

6 DIRECT EXAMINATION

7 BY MS. McENTEE:

8 Q. Please state and spell your first name and
9 last name for the record.

10 A. Kara Bowes. And it's spelled K-a-r-a, last
11 name Bowes, B-o-w-e-s.

12 Q. And during the course of this deposition,
13 may I call you both Kara or Ms. Bowes?

14 A. Yes.

15 Q. Okay. Have you ever been deposed before?

16 A. No.

17 Q. I'm going to go through just some of the
18 basic rules for how the deposition should go, so you
19 understand. It's important that you understand all
20 of my questions. If at any time you don't
21 understand the question, will you ask me to clarify
22 it?

23 A. Yes.

24 Q. If you don't ask me to clarify the
25 question, I'm going to take it to mean you

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1 understand the question, and that your answer
2 responds to that question. Okay?

3 A. Okay.

4 Q. Because the court reporter is taking down
5 everything that we're saying, it's important that
6 you respond verbally with a "yes", "no" or some
7 other answer versus "uh-huh" or a non-verbal head
8 nod, something like that; do you understand?

9 A. Yes.

10 Q. It's also important that we not talk over
11 one another, which can be hard to do, because this
12 is so different than what normal conversation is
13 like. But it's difficult for our court reporter to
14 write down what both of us is saying at the same
15 time; do you understand?

16 A. Yes.

17 Q. You can take a break at any time with one
18 exception, and that's if I have a question pending.
19 If I have a question pending, you have to answer
20 first before you take a break; do you understand?

21 A. Yes.

22 Q. And then, finally, have you taken any
23 medications or are you on any substances that would
24 prevent you from providing clear and accurate
25 testimony today?

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1 A. No.

2 Q. Do you have any legal training?

3 A. No.

4 Q. We were kind of talking before the
5 deposition a little bit about development work, so
6 I'm curious about your line of business.

7 A. It's real estate, I'm a realtor. I am a
8 broker, but, obviously, I always say, "I'm not an
9 attorney, you have to seek legal advice," in my line
10 of work, so I've had no legal training.

11 Q. Got it. Is realtor and broker the same
12 thing in Oklahoma?

13 A. Broker is, you can have real estate agents
14 under you, so it does take a little bit of extra
15 testing, classwise. So I'm actually able to own and
16 operate my own office of real estate.

17 Q. What's the name of your business?

18 A. KBB Real Estate.

19 Q. And do you have realtors underneath you?

20 A. Currently one.

21 Q. So in your line of business as a
22 realtor/broker, have you ever been in a position to
23 have to hire legal counsel to assist you in those
24 types of matters?

25 A. Not yet.

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1 Q. How long have you been doing this kind of
2 work?

3 A. Almost 15 years.

4 Q. You've been lucky then.

5 A. (Nods head.)

6 Q. Have you ever hired lawyers to assist you
7 in other types of matters?

8 A. Just in that one Whirlpool case.

9 Q. Okay.

10 A. And a divorce, but it never went to --
11 further than -- what do you call it -- mediation.

12 Q. Got it. I'm going to ask you about the
13 Whirlpool case a little bit later, but I do know
14 about that one.

15 So other than the Whirlpool case and the
16 divorce, you haven't hired legal counsel?

17 A. Correct.

18 Q. And then just to clarify, Brooke Bowes is
19 your daughter; correct?

20 A. Correct.

21 Q. Are you familiar with the Telephone
22 Consumer Protection Act?

23 A. Yes.

24 Q. Tell me how you're familiar with it.

25 A. Well, just being in business every day, I

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1 buy cell phones. In fact, I got in real estate
2 because I wanted a cell phone. And, of course, I've
3 always treated it -- you know, I've always paid
4 attention to my kids, I've raised two kids, and I'd
5 give them the rights of phones, since they were
6 little, and educated them on phones and how to use
7 them properly. So I kind of think it's an important
8 tool, yeah.

9 Q. The cell phone is an important tool or the
10 Telephone Consumer Protection Act is an important
11 tool?

12 A. Well, both are -- well, I don't know how to
13 answer that. Clarify that.

14 Q. I'm mostly trying to clarify what you said.
15 You said, I think it's an important tool, and I
16 wasn't sure what you were referring to.

17 A. Well, the phones are. But you have to know
18 what your rights are and not your rights are. In my
19 business, I have a lot of people screen shot things.
20 There's just a lot of business that is carried on
21 through a cell phone. And I am not -- this whole
22 thing is important to me because of the fact that
23 they send text messaging to -- you know, so it's
24 important to me.

25 Q. When you say "the whole thing," you mean

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1 this lawsuit?

2 A. Yes.

3 Q. I might refer to the Telephone Consumer
4 Protection Act as the TCPA, just to make it easier.
5 Do you understand what I mean when I say that?

6 A. Yes.

7 Q. Okay. When did you first hear about the
8 TCPA?

9 A. Well, when I read -- when I got on my claim
10 form sheet, and it said that it was about the -- you
11 know, my claim form that came in the mail, I was
12 reading it, and I was kind of confused, so I talked
13 to John, who is an attorney that I'm aware of, and
14 they're in business together. John is a business
15 partner with me in real estate.

16 Q. So when you got the notice about this
17 settlement and American Eagle, you talked to John?

18 A. I called John.

19 Q. And John who?

20 A. Davis.

21 Q. He's your business partner in what context?

22 A. Real estate.

23 Q. Is he one of the agents in your office?

24 A. No.

25 Q. Can you explain to me a little bit more

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1 about what the nature of your business relationship
2 is with John Davis?

3 A. We do -- he doesn't have a real estate
4 license here. He has a real estate license. He's a
5 broker in California, as well. So we kind of -- we
6 have a business relationship in real estate.

7 Q. Okay.

8 A. Yeah.

9 Q. Have you developed properties together?

10 A. Not yet.

11 Q. Okay. Do you refer clients to one another?

12 A. No.

13 Q. Okay. So what's the business relationship
14 that you have?

15 A. I mean, we basically have formed an LLC to
16 do real estate in the future. We aren't doing any
17 currently, right now. But as a real estate broker,
18 I like to ask for his advice in law questions,
19 because it is business. So that's -- you know, does
20 that make sense a little bit? I just thought it
21 would be -- I mean, he doesn't have a broker's
22 license here. But we thought about doing some work
23 in the future, so we did form an LLC.

24 Q. Okay. And the idea was that you would
25 possibly do future business together here in

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1 Oklahoma?

2 A. Yes.

3 Q. And John Davis is a lawyer; is that right?

4 A. Yes.

5 Q. And how did you meet him?

6 A. He was in town on business, and we met each
7 other just casually and have known each other now
8 for a few years.

9 Q. Do you remember approximately the year that
10 you met him?

11 A. 2014. It was through my divorce. I got
12 divorced in 2014, so right around that time.

13 Q. Okay. And what were the circumstances of
14 you meeting him through your divorce?

15 A. Just we were hanging out, and I was hanging
16 out with someone else that he knew. So it was a
17 mutual friend type thing.

18 Q. You met him socially?

19 A. Yeah, socially.

20 Q. Okay. And what is the -- so he's a
21 business partner now?

22 A. Uh-huh.

23 Q. Has he ever been your lawyer?

24 A. Other than the Whirlpool case, no.

25 Q. Okay. So he's not representing, for

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1 example, with respect to this case?

2 A. No.

3 Q. And did you meet Mr. Isaacson through
4 Mr. Davis?

5 A. Yes.

6 Q. Okay. I'll ask you more about that in a
7 little bit.

8 Coming back to the TCPA, I think I asked
9 you, when did you first hear about the TCPA. And I
10 think you said it was through John Davis; is that
11 right?

12 A. Well, I read it on the actual thing.

13 Q. Okay.

14 A. And I looked it up. And I was like, "Oh."
15 And I -- you know, I get on the Do Not Call list and
16 that kind of stuff. That's important to me. I
17 don't want to be called all the time by people other
18 than people that want to do business with me. So I
19 kind of educated myself a little bit, but I don't
20 pay attention to all the fine details.

21 Q. Sure.

22 A. And then I got this thing, and it was
23 American Eagle. And it says "TCPA," and I was just
24 like, this is interesting. I called John up, and I
25 said, John, you know, I have some issues with this.

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1 And he just said --

2 MR. ISAACSON: No. I have to
3 object, attorney/client privilege.

4 THE WITNESS: Okay.

5 MS. McENTEE: Well, I think she
6 testified earlier that he's only represented her
7 with respect to Whirlpool, and that he's not
8 representing her on this case.

9 MR. ISAACSON: She testified that
10 he is not representing her in this case, that's
11 correct. But she was calling him to get legal
12 advice, so it's a privileged communication.

13 Q. (By Ms. McEntee) Did you call him to get
14 legal advice?

15 A. I did.

16 Q. So he's both your lawyer and your business
17 partner?

18 A. Well, on that thing -- I was getting legal
19 advice on this, because I got that claim form sheet.
20 And I was, like, interested in knowing more about
21 this. And he said --

22 MR. ISAACSON: I have to object
23 and instruct you not to answer. Your communications
24 with John about this case were seeking legal advice
25 that resulted in a referral to me, but the

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1 communications are privileged.

2 Q. (By Ms. McEntee) I'm just trying to -- I
3 don't want you to tell me what he said, until we
4 sort out whether they were. Okay? But I'm trying
5 to understand the context, so don't tell me what he
6 said to you, let me just ask you a couple pointed
7 questions, and then maybe we'll move on from this.

8 But were you contacting him for the purpose
9 of seeking legal advice, or were you contacting him
10 as a friend and business partner to tell him about
11 receiving this notice in the American Eagle
12 settlement?

13 A. Well, that I received this notice, and
14 that's it on client privilege, I guess. You know,
15 that's all I contacted him for.

16 Q. That's what I'm trying to find out. Were
17 you asking him for his advice, legally, when you
18 contacted him?

19 A. I got it. I called him up, and he referred
20 me immediately to Eric, is what he did.

21 Q. Okay.

22 A. He didn't want to be involved in a legal
23 thing with me because of the Whirlpool case.

24 Q. Okay.

25 MS. McENTEE: And I appreciate

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1 your position, Mr. Isaacson, but I'm not -- I really
2 am not sure that -- it doesn't sound to me like she
3 was contacting him to be her lawyer. And she's
4 testified that he only represented her with respect
5 to Whirlpool.

6 MR. ISAACSON: She testified that
7 she called him, because he was her lawyer in the
8 Whirlpool case, that he was a lawyer that she knows
9 through her business working, and that she called
10 him when she got a legal notice.

11 THE WITNESS: As a class member.

12 Q. (By Ms. McEntee) Okay. He referred you to
13 Mr. Isaacson?

14 A. Correct.

15 Q. Okay. And I assume you called Mr. Isaacson
16 at that point?

17 A. Yes, I did.

18 Q. All right.

19 MR. ISAACSON: I think I want to
20 move to strike the answer about the Whirlpool case.

21 MS. McENTEE: Let's be specific
22 about what you want to strike.

23 MR. ISAACSON: The statement about
24 John Davis saying something to her about the
25 Whirlpool case.

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1 MS. MCENTEE: Okay. I'm fine with
2 that. That's fine.

3 Q. (By Ms. McEntee) What is your
4 understanding, that you don't know the fine details,
5 because you've said that -- what is your
6 understanding of what the Telephone Consumer
7 Protection Act does?

8 A. It protects people from spam text messages,
9 alerts. And they shouldn't be utilizing my cell
10 phone to just spam me, period.

11 Q. And perhaps specifically with advertising?

12 A. Yes.

13 Q. Before this case, did you ever receive
14 those types of texts to your cell phone from anybody
15 else?

16 A. Possibly, yes. Yeah, I'm sure I have.

17 Q. Do you remember from whom?

18 A. Could be from anything, Groupon, I don't
19 know. I mean, not the -- I'm just trying to, you
20 know -- but I don't like them, it clogs up my cell
21 phone. And all I want is my -- you know, I am in
22 business to get leads in real estate, and I want to
23 be able to see those. I don't want a bunch of calls
24 that shouldn't call me and spam text messages that
25 shouldn't be spamming me.

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1 Q. And understanding that you don't know all
2 the details about TCPA, when you got those prior
3 texts from Groupon or from whoever, did you think
4 that those were unlawful?

5 A. I did not know that they were unlawful. I
6 would always hit "stop." When they started saying,
7 you can hit "stop," I realized something -- they
8 shouldn't be sending these to me. And I would
9 always put "stop." That's when it started hitting
10 me that maybe they shouldn't be doing this or they
11 wouldn't put on there you have a choice.

12 Q. Sure.

13 A. And that's when I really kind of started
14 thinking, oh, they probably shouldn't be doing this
15 to me.

16 Q. And you became kind of aware of that idea
17 of "stop," indicating this is something that they
18 shouldn't be doing before the American Eagle case?

19 A. Correct.

20 Q. Prior to the American Eagle case, did you
21 ever follow through on that idea and reach out to
22 John, or any other lawyer, to figure out whether you
23 might have a claim against those companies like
24 Groupon or whoever it was?

25 A. No.

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1 Q. Why not?

2 A. I just didn't think about it. I figured no
3 one would listen to me maybe.

4 Q. And do you understand that the TCPA can
5 also prohibit phone calls to your cell phone that
6 aren't texts?

7 A. I thought maybe, that's why I brought that
8 up.

9 Q. But you never pursued any potential --

10 A. No.

11 Q. -- claims based on those types of --

12 A. No.

13 Q. -- calls?

14 And I'm just going to remind us to try to
15 not talk over each other, because it's really hard
16 for her. Again, it's totally different than regular
17 communication. But it's just really important for
18 her to be able to get everything down.

19 So just so I'm clear, before the American
20 Eagle case, you were not involved in any sort of
21 case that asserted a violation of the TCPA?

22 A. Correct.

23 Q. How often do you shop at American Eagle?

24 A. Not much now, but I did a lot, when the
25 kids were ages 14 to 17, because that's the age that

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1 I feel they target.

2 Q. And Brooke's 20, 21?

3 A. Twenty, and my son is 18. Probably last
4 Christmas bought my son some jeans there. He buys
5 most of his jeans from American Eagle.

6 Q. Okay. When you were buying clothes for
7 your kids, did you ever take advantage of any of the
8 promotions?

9 A. Yeah, I think I did. But let me tell you,
10 a lot of times, I gave my kids money and let them
11 pick and choose and shop. That's kind of how this
12 all -- that's why I immediately called Brooke. A
13 lot of times, I'll say, "Here's a couple hundred
14 dollars, let's go shopping." And she would shop and
15 pick and choose. And I might be wandering another
16 part of the mall, come back.

17 And I have very strict rules with my kids
18 on their phones, because I've been paying for their
19 phones. And one of them is -- was not to receive
20 text messaging. In fact, the first thing she said
21 is, "Mom, I signed up, but I did 'no mobile
22 alerts'." That's why this is kind of an important
23 case to me, because back in the day, they charged me
24 for any text messages that came through on their
25 phone. And that's why I had rules in my house with

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1 my kids. And I'm not happy about it.

2 Q. I understand. I understand.

3 Were any of those shopping trips, where you
4 gave the kids money to go shop, ever in response to
5 you getting a promotion from American Eagle either
6 by text or by email?

7 A. No, that didn't spur me to go shop.

8 Q. Okay.

9 A. It just annoyed the heck out of me.

10 Q. You mentioned earlier that you would
11 occasionally text -- you learned that you could text
12 "stop" to Groupon or other companies, did you ever
13 text "stop" to American Eagle?

14 A. I don't think so. It was an odd time when
15 they started coming to me. My kids were past the
16 age of 17, that I was even shopping. I'm a pretty
17 busy person. I get a ton of stuff. And that takes
18 more time, and it's not making me money, it's
19 costing me time, so I don't think I ever did. But I
20 will tell you, I probably deleted a lot of messages
21 from them.

22 Q. We're going to take a look at just a couple
23 of exhibits.

24 This is Exhibit 1. And that, if I am
25 correct, is your declaration that you submitted in

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1 support of the objection to the American Eagle
2 settlement; is that's right?

3 A. Uh-huh.

4 Q. And we talked earlier about the Whirlpool
5 case. Can you tell me what your involvement was
6 with the Whirlpool case?

7 MR. ISAACSON: You can answer
8 without revealing any communications with your
9 lawyers. Don't talk about anything that you said to
10 your lawyers or your lawyers said to you.

11 THE WITNESS: I basically thought
12 I was a class member, because I bought a brand-new
13 home with a Whirlpool that broke down within the
14 first two or three years. I replaced it with a
15 Bosch dishwasher. And I was like, gosh, I thought I
16 bought a brand-new home and I wouldn't have a
17 problem with this. Of course, I have a plumber in
18 hand, like I do every other handyman. I called up
19 my plumber, he came and took a look. I called my
20 other guy and said, "Deliver me a new dishwasher."
21 And that was the end of that.

22 And then, you know, I thought I
23 was a class member of it, and I wasn't. I couldn't
24 find the receipt to say I was, when it came down to
25 it.

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1 Q. (By Ms. McEntee) So you thought you were a
2 class member, was that because you got a notice in
3 the mail?

4 A. Really, I was talking -- I did get a notice
5 in the mail. But I had purchased a home, and it was
6 in those years that they said they had problems --
7 problematic dishwashers. I was just chit-cattin'
8 about my flips, and I was like, "Gosh, I bought this
9 new home," you know, just talking in general,
10 socializing. And I thought I was a class member
11 from just my communications, socially.

12 And then I went looking for my receipt, and
13 I couldn't find it. That's because I was moving,
14 and I had stuff in two different storage units and
15 moving my house. I was like, I can't find the
16 receipt, so I can't even prove it, so I'm not even
17 going to mess with it.

18 Q. So you learned that there was a case
19 against Whirlpool from social conversations with
20 other people?

21 A. Uh-huh.

22 Q. Did that include John Davis?

23 A. Yeah.

24 Q. And Mr. Davis represented you in that case;
25 correct?

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1 A. Yes.

2 Q. And Mr. Isaacson also represented you?

3 A. He was also on -- yeah, he was.

4 Q. Okay. Did you remember that because he was
5 nodding or because you just remembered it?

6 A. No. I know. And Ben Nutley, too.

7 Q. Okay. I understand that you had a social
8 relationship with Mr. Davis, initially. Did you
9 meet Mr. Isaacson before this case?

10 A. On the phone we've talked. I've never been
11 to San Diego.

12 Q. Okay. And have you ever met Mr. Nutley?

13 A. No, face to face, I have not.

14 Q. So you thought you might have been a class
15 member of the Whirlpool case, and you submitted a
16 claim on-line?

17 A. Yes.

18 Q. Okay. And then I've read some of the
19 paperwork related to that. And correct me if I'm
20 characterizing this wrong, but my understanding is,
21 because of how many years had passed, you didn't
22 have the paperwork to show that you had purchased
23 the Whirlpool product, and so because that was
24 required as part of the class settlement, you
25 withdrew your objection; is that right?

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1 A. Correct.

2 Q. And as I also understand, you did not
3 receive any payment in connection with withdrawing
4 that objection?

5 A. Correct.

6 Q. And your attorneys also did not receive any
7 payment?

8 A. Correct.

9 Q. So turning back to this case and Exhibit 1,
10 which is right in front of you, your declaration, I
11 understand you knew that you were class member in
12 this case, because you got a notice in the mail; is
13 that right?

14 A. Yes.

15 Q. And that notice is what's attached there as
16 Exhibit A to Exhibit 1.

17 A. Yes.

18 Q. And the notice part is actually on the back
19 of that document.

20 A. Yes. That's what I read.

21 Q. And so did you read that part, where it
22 says, "Why am I getting this notice"?

23 A. Yeah, I did. I read all of it, which I
24 need readers right now.

25 Q. I know. It's very small font.

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1 A. It is.

2 Q. Where it says, "Why am I getting this
3 notice," do you see where it says, "You were
4 identified as someone who may have received one of
5 these text messages based on AEO's records"?

6 A. Yeah.

7 Q. So you understood that you got this notice,
8 because you were on their list, basically?

9 A. Yes.

10 Q. And as I understand, your daughter, Brooke,
11 did not get a notice like this?

12 A. Correct.

13 Q. And have you since heard that she was not
14 on the list?

15 A. No, I have not.

16 Q. She was not on the list, I can represent to
17 you.

18 So I want to talk a little bit about your
19 declaration and your objection to the settlement
20 and, specifically, in paragraph 2. And it's page 2
21 of the document. There we go, paragraph 2 there.

22 It says, "I submit this declaration in
23 support of my objection to the proposed class action
24 settlement agreement, incentive awards and
25 attorney's fees."

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1 And then it goes on to cite the case. Do
2 you see that?

3 A. Yes.

4 Q. But then the rest the declaration doesn't
5 talk about the reasons why you object. And so
6 that's what I want to talk about, is what some of
7 these reasons are. So tell me, why don't you like
8 the settlement?

9 A. Well, when I -- first of all, I feel that
10 you've got your plaintiffs that were given -- when I
11 got ahold of him, I read through. They got \$10,000.
12 And I have plenty of text messages. And I'm a class
13 member, because they've let me know I'm a class
14 member. Your attorneys are getting, like, I don't
15 know, \$4.8 million dollars, which there's -- and
16 this big case, if I kind of went through the
17 whole -- as I was reading through our objection, I
18 realized how little the class members are getting.
19 The plaintiffs are getting \$10,000. And I might get
20 under \$30, you know, depending.

21 And not all people are class -- I mean,
22 they have 618,000 class members or something, but
23 yet they missed people, because if they missed
24 Brooke, I'm thinking about how many more people they
25 missed. And I think there's a lot of teenagers out

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1 there that were missed. And --

2 Q. So I want to go back and ask -- well, I
3 didn't want to cut you off.

4 A. You're fine.

5 Q. I'm going to go back and break some of that
6 down. You said, "I read through," but you didn't
7 say what you had read. What did you read?

8 A. First of all, I read the original -- if you
9 read here, it talks about the \$14 million
10 settlement. And I'm going to end up with a check
11 for under \$30.

12 Q. What are you looking at there?

13 A. What does this -- "AEO has agreed to pay a
14 total of \$14,500,000 into a Settlement Fund, which
15 will pay for the cost of notice administration of
16 this settlement."

17 So out of \$14,500,000, I was like, okay.
18 You know, we may receive rewards of \$142 to \$285.
19 Well, I just think that, first of all, who's getting
20 all that money of the \$14 million? Well, probably
21 the attorneys are getting it. And I was, like, why
22 are they getting so much?

23 Then these others -- I just didn't think
24 the numbers were adding up, to me. And I actually
25 think it's being settled a little too low, because I

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1 started doing the Telephone Credit Protection Act,
2 and each text should be about \$500. And I'm sitting
3 here thinking, I got a lot of texts that are coming
4 in to me. And I'm only going to be settled for
5 fractions on the dollar, and these attorneys are
6 going to walk away with millions of dollars. I
7 don't feel that they're doing the class justice.

8 Q. So I see where you read about the
9 attorneys' fees and you read about the amount that
10 we're asking that the class representatives get,
11 which, by the way, they haven't got yet, the court
12 has to approve that. Did you know that, that the
13 court has to approve it?

14 A. Yeah. I assumed it hadn't been finalized.

15 Q. When you were reading through part of that
16 notice, you referenced that class members might get
17 a cash award of between \$142 and \$285.

18 A. Uh-huh.

19 Q. But then before that, a few minutes ago,
20 you said --

21 A. Yeah, it was under \$30.

22 Q. So just let me finish, so the court
23 reporter can -- before that, you said, "Hey, and I
24 was reading I was going to get under \$30." So given
25 that you read what we put out there, which was \$142

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1 to \$285, where did you come up with this notion that
2 you were going to get under \$30? And if the answer
3 is -- let me just say, if it's -- let me ask it
4 differently.

5 Did that notion, that you would end up with
6 under \$30, come from any other source than your
7 attorneys?

8 A. No.

9 Q. So you did not get out the calculator --

10 MR. ISAACSON: I have to object
11 that that reveals confidential communication with
12 her attorneys.

13 MS. McENTEE: Objection noted, but
14 I think it's a proper question. I'm entitled to
15 know why she believes she's going to get under \$30.

16 MR. ISAACSON: Well, a person can
17 do the math. You can divide the \$14.5 million by
18 600,000 --

19 Q. (By Ms. McEntee) Did you do the math to
20 determine that you were only going to get under \$30?

21 A. Well, I think you don't have all the class
22 members.

23 Q. That's not my question. And I don't mean
24 to be difficult, but I need you to answer that
25 question. Did you get out a calculator and do math

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1 that led you to believe that you were going to get
2 under \$30 for your claim?

3 A. I have talked to friends that say every
4 time they don't fill these out, these are just
5 regular social friends, they never get what they say
6 they're going to get. That is something that a lot
7 of my friends say. So they think I'm wasting my
8 time. But I feel like I'm making a point to this
9 whole -- the reason I'm involved in this, there is a
10 point to be made here.

11 Q. Did you use a calculator --

12 A. I didn't use a calculator, per se, even
13 though I'm sitting here looking at these numbers and
14 thinking, something just doesn't seem to add up to
15 me.

16 Q. So you don't know, as you sit here, how the
17 number of \$30 came about?

18 A. I just threw out that number. I don't feel
19 that I will end up with \$142. And I don't know if
20 it says exactly to each text --

21 "Member who submits a valid claim form will
22 receive a cash award between \$142" -- but still,
23 \$142 to \$285, this really should be a bigger case,
24 if you think about all the text messages that every
25 class member that's out there -- and we don't even

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1 know who all the class members are.

2 Q. Do you both list property -- do you
3 represent both buyers and sellers?

4 A. Yes.

5 Q. Do you get paid if a house doesn't sell?

6 A. No, nothing.

7 Q. Do you think that class action attorneys
8 get paid on every case that they take?

9 A. Probably not.

10 Q. If you don't win, you don't get attorney's
11 fees?

12 A. Uh-huh.

13 Q. Right?

14 A. Yeah, probably.

15 Q. So it's a little bit similar in terms of
16 risk. And as I understand it, you are typically
17 paid, correct, based on a percentage of a price;
18 right?

19 A. Uh-huh.

20 Q. Do you understand that's kind of a similar
21 model to how class action attorneys make a living?

22 A. Yeah.

23 Q. Do you understand that people who assert
24 that they got texts from American Eagle, like
25 Brooke, but who were not on the list, have not given

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1 up any right to be able to pursue American Eagle for
2 those texts?

3 A. Well, that's why she got on-line and
4 submitted, because she's a class member.

5 Q. But she's not a class member.

6 MR. ISAACSON: I object that that
7 is argumentative and a statement of -- without
8 foundation.

9 MS. McENTEE: Counsel, there's
10 lots of foundation for it. And we'll be submitting
11 declarations to that effect. And I've advised you
12 that Brooke is not a class member prior to these
13 depositions.

14 MR. ISAACSON: You have advised me
15 that Brooke is not on the list of approximately
16 618,200 and something members. "Approximately"
17 means the number of people on the list is not
18 defining the class, which means that the list is not
19 defining the class. The list is a description of
20 how many people are identified from the people who
21 are within the class, which then is, as I recall, in
22 the preliminary approval order and released to find
23 in terms of getting unconsented text messages. And
24 I believe that Brooke is in the class of people who
25 got those unconsented text messages.

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1 MS. McENTEE: Counsel, you're
2 incorrect about your interpretation. But we don't
3 need to take up Ms. Bowes' time regarding incorrect
4 understandings of the documents.

5 Q. (By Ms. McEntee) Do you understand that
6 only people, who have been deemed class members,
7 give up their rights related to texts they may have
8 received from American Eagle?

9 MR. ISAACSON: I object to that
10 question as --

11 MS. McENTEE: Your objection is
12 noted, but I think we both need to stop with the
13 talking objections.

14 Could you please repeat the
15 question to the witness?

16 (Record read as requested.)

17 MR. ISAACSON: I object to the
18 question as assuming facts not in evidence.

19 MS. McENTEE: Objection is noted.

20 Do you want to just read that
21 question again, so that she can --

22 (Record read as requested.)

23 THE WITNESS: If you're a class
24 member, you're giving up your rights, is what you're
25 trying to ask me? I've been deemed a class member.

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1 They're the only ones giving up their rights.

2 Q. (By Ms. McEntee) That's right. And I'm
3 asking you if you understand that?

4 A. I didn't until just now, you're trying to
5 tell me that. But I wouldn't have -- I did not know
6 that until this moment.

7 Q. I guess what I'm saying is, we have a
8 disagreement about whether Brooke is class member.
9 What I'm trying to say is, do you understand that if
10 she's not a class member, she can go and pursue
11 American Eagle if she wants to.

12 A. If she wants to.

13 Q. Do you understand that?

14 A. I understand it now, I didn't before.

15 Q. Did you, at any point, go onto the
16 settlement website and look at it?

17 A. I may have, I don't recall.

18 Q. Okay. Do you recall -- if you did go on
19 there, do you recall seeing anything that
20 specifically said that the class involved in the
21 settlement was limited to a subset of people who got
22 texts from American Eagle?

23 A. I don't remember that.

24 Q. Are you specifically aware of any class
25 actions, in which class members got every single

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1 dime of damages that they would be, perhaps,
2 entitled to if they sued individually?

3 A. No.

4 Q. So what's the basis of your complaint, for
5 lack of a better word, that class members should be
6 getting exactly \$500 per text?

7 A. Well, I think we should --

8 MR. ISAACSON: I object, that
9 mischaracterizes her testimony.

10 Q. (By Ms. McEntee) The other rule we didn't
11 go over, which I should have, is that from time to
12 time, your lawyer is going to object. Unless he
13 instructs you not to answer, we give him a chance to
14 make the objection, and then you have to answer.
15 Sometimes, that disrupts the flow of remembering the
16 question, at which point, the court reporter can
17 read it back to you. Okay?

18 A. Okay.

19 Q. Do you need us to read back that question?

20 A. I'm afraid to answer it. What was the
21 question? Read it back.

22 (Record read as requested.)

23 THE WITNESS: The basis of my
24 complaint is, first of all, the class
25 representatives are getting money that I'm not

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1 getting. And I'm a class member. And I think the
2 attorneys could get more, because they are just
3 settling for too little on this basis. But those
4 few class representatives, the plaintiffs, are
5 getting \$10,000. I should be in that same boat or
6 more, because I have a lot of text messages, and my
7 child does.

8 Q. (By Ms. McEntee) And how do you know we
9 could have gotten more?

10 A. Well, this is a big company. They made a
11 lot off me in the last -- and they make a lot of
12 money. And I don't think this is just a tiny little
13 company. When I got -- I was like, I've been buying
14 stuff there forever. And I don't like that they
15 text message spam me all the time. And it actually
16 got worse after my kids -- like I said, the time I
17 was -- originally. If anything, I probably wanted
18 to purchase less from them. But they -- \$14 million
19 is nothing.

20 Q. And so what facts are you basing your
21 statement on, your statement that we could have
22 gotten more from American Eagle? What facts -- I
23 mean, I get that you're upset about it.

24 A. I don't have any hard facts.

25 Q. Okay. And you got a bunch of texts.

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1 Ballpark, how many did you get?

2 A. Fifty, and that doesn't include, probably,
3 some that I deleted, or phone broken and had to
4 reboot it and that kind of thing. I just -- you
5 know, it was interesting. I saw it, I just put AEO,
6 because I was like, gosh, I think they've been
7 texting me. And I looked, and there was, like, 50
8 of them. I'm like, yeah, they were going crazy.

9 Q. Do you understand that you could have opted
10 out of this settlement to pursue American Eagle
11 individually for those 50 texts?

12 A. I did not know that.

13 Q. Yeah. So take a look at Exhibit 1 and
14 Exhibit A to that, which is that notice that we went
15 over before.

16 A. Yes.

17 Q. So do you see where it says, "Do I have to
18 be included in the settlement?"

19 A. Okay. That's about the fifth paragraph
20 down?

21 Q. Yeah.

22 A. "If you do not want monetary compensation
23 from this settlement and you want" --

24 I just thought I had to sign this in order
25 to even make a point to -- so that's really kind of

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1 what I thought when I did that, to keep this --
2 "combined with AEO on your own, then you must
3 exclude yourself from the settlement by sending a
4 letter requesting exclusion for the claims
5 administrator by March 24th."

6 Yeah, I just thought that I had to send it
7 in. And I didn't want to lose it for -- you know,
8 so I sent it in and --

9 Q. But you agree that that language telling
10 you how to exclude yourself from the settlement was
11 here in the notice?

12 A. Well, yeah, now I see it. I mean, I kind
13 of glanced at it, and I didn't read it real
14 detailed.

15 Q. Did you already have legal counsel before
16 you submitted your claim?

17 A. No.

18 Q. You hired legal counsel after you submitted
19 your claim?

20 A. Yeah.

21 Q. Why didn't you or your lawyers call class
22 counsel, meaning Beth Terrell, Keith Keogh, about
23 any of these questions you had about the settlement
24 before you filed your objection?

25 MR. ISAACSON: I object to the

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1 question, to the extent it asks why her lawyers
2 didn't call on the ground that calls for attorney-
3 client communications.

4 Q. (By Ms. McEntee) Why didn't you call?

5 A. I wouldn't know who to call.

6 Q. Did you look into who to call?

7 A. No. It's like, I let my plumbers plumb, I
8 let my elections do electrician work, I let my
9 attorneys do attorney work, and I do real estate.
10 And so I just -- you know, that's how I look at it.
11 I wouldn't have even thought of looking into it.

12 Q. Okay. As part of your real estate
13 business, do you ever have a provider, like a
14 plumber and an electrician do an exceptional job for
15 you that results in you paying them something over
16 and beyond what you normally would as part of a
17 deal?

18 A. Usually, the plumbers or electricians do
19 things for less, because they like working for me.
20 It usually goes the other for me, because I make
21 sure they're paid as soon as they do the job. And
22 they like it. Some people don't even pay their
23 bills.

24 Q. Are you ever in a position to pay a stager
25 or anybody like that?

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1 A. Uh-huh, I do pay staggers.

2 Q. Do you ever pay anybody a bonus, or
3 anything like that, for exceptional work?

4 A. The only time is usually disclosed. And
5 it's if I put a house on the market and I need to
6 sell it, I'll put a \$1,000 bonus to -- if you bring
7 me an offer by July 15th, something like that.

8 Q. So sort of like a disclosure that's on
9 Exhibit A, that says the plaintiffs -- we're going
10 to ask for \$10,000 for the named plaintiffs, like
11 that kind of disclosure?

12 A. Yeah.

13 Q. So is it fair to say that you did not meet
14 Mr. Isaacson until you worked with him as part of
15 the Whirlpool case?

16 A. Yes.

17 Q. And you don't have a social relationship
18 with him at all?

19 A. Huh-uh.

20 Q. Is it also true that you were not
21 introduced to Mr. Nutley until the Whirlpool case?

22 A. Correct.

23 Q. Did your business relationship with
24 Mr. Davis exist before or after the Whirlpool case?

25 A. Before.

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1 Q. Do you know whether Mr. Isaacson has ever
2 agreed to withdraw an objection to a class action
3 settlement in exchange for payment of money?

4 A. No.

5 Q. No, you don't know?

6 A. (Shakes head.)

7 Q. Do you know whether Mr. Nutley has ever
8 offered to withdraw an objection to a class action
9 settlement in exchange for payment of money?

10 A. No.

11 Q. Do you know whether Mr. Isaacson has ever
12 agreed to dismiss an appeal of the approval of a
13 class action settlement in exchange for the payment
14 of money?

15 A. No.

16 Q. And do you know whether Mr. Nutley has ever
17 agreed to dismiss the appeal of the approval of a
18 class action settlement in exchange for the payment
19 of money?

20 A. No.

21 Q. I you understand that you signed an
22 engagement or retainer agreement with Mr. Isaacson.
23 We're going to mark that.

24 (Exhibit No. 4 marked

25 for identification and made a part of

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1 the record.)

2 Q. (By Ms. McEntee) Is this your engagement
3 agreement, retainer agreement with Mr. Isaacson?

4 A. Uh-huh.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
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20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 Q. Have you ever submitted a claim in a class
2 action and not objected? That would exclude
3 Whirlpool and this.

4 A. No.

5 Q. Have you ever received a notice of a class
6 action settlement other than this one?

7 A. Not that I'm aware of. Not that I recall.
8 I'm sure I have, but I didn't know what they were.
9 I mean, sometimes, I get ten things in the mail and
10 don't even pay attention to -- the only thing I pay
11 attention to is, is it a bill and do I have to pay
12 it?

13 MS. McENTEE: So what I would like
14 to do, if it's okay, is just take a quick break and
15 see if I've got other questions. And if I don't, we
16 can turn it over to Mr. Victoria and Mr. Isaacson
17 and go from there.

18 (Short break.)

19 CROSS EXAMINATION

20 BY MR. VICTORIA:

21 Q. Hi, Ms. Bowes. I apologize for the awkward
22 asking questions over the telephone by someone
23 you've never met, but this is most convenient way to
24 do it sometimes.

25 My name is Richard Victoria, and I'm one of

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1 the lawyers for American Eagle Outfitters. I just
2 want to ask you a couple of quick questions.

3 I believe you stated earlier that you don't
4 recall having ever sent a stop message in response
5 to any of the texts from American Eagle; is that
6 correct?

7 A. I don't recall. I do so many, so I could
8 have, I could have not. I don't recall.

9 Q. Okay. Do you still receive messages from
10 American Eagle?

11 A. No, I haven't. It's funny, because I was
12 sitting here thinking, imagine if I just received
13 one right now, because you never know when they'll
14 start again.

15 Q. Do you know when they stopped?

16 A. Yeah. I can actually look at my phone
17 right now and tell you when the last one was. Hold
18 on, let me get my phone to stop ringing, and then
19 I'll tell you exactly.

20 Q. You don't even have to give a precise date.
21 Was it before or after you filed your objection, if
22 you remember?

23 A. I still got them after I filed my
24 objection, but not too many after that. So it was
25 around -- hold on. I'll put "AEO," and it will pull

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1 up. I want to say, it was -- hold on. I want to
2 look, because now it's driving me crazy.

3 My phone gets locked up, because it has so
4 much junk on it. I'm always trying to clear things
5 up. That's why I would think that I try to delete
6 them. But since I saw this, I kind of let them keep
7 coming.

8 Okay. It came 4-2 of '17, 10:00 p.m.
9 April 2nd was my last one. And it doesn't even give
10 me the option to say "stop," it just says, "Shop
11 now."

12 Q. But that's the last one you got?

13 A. That was the last one I got.

14 Q. Okay. So, then, it was before you filed
15 your objection?

16 A. It was March, April. Yeah, but I think I
17 had gotten the thing in the mail. And then I didn't
18 have -- I mean, I think I sent in that objection in
19 May or March, April, somewhere.

20 MR. VICTORIA: Okay. That's the
21 only question I have.

22 THE WITNESS: Okay.

23 MR. VICTORIA: Thank you.

24 THE WITNESS: Okay.

25 Yeah, April 2nd, and that was sent

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1 on April 23rd. I think I received in the mail,
2 though. What day did I receive that?

3 MS. McENTEE: Mr. Isaacson, do you
4 have any questions?

5 MR. ISAACSON: Yeah, just a few.

6 I would like to mark two documents
7 as Exhibits 5 and 6.

8 (Exhibit Nos. 5 and 6
9 marked for identification and made
10 a part of the record.)

11 CROSS EXAMINATION

12 BY MR. ISAACSON:

13 Q. Kara, I would like to ask, do you recognize
14 the two documents I put before you, marked Exhibits
15 5 and 6?

16 A. Yeah.

17 Q. Can you tell me what they are?

18 A. Well, I called Brooke up when I got my
19 thing and said, "Brooke, did you send" -- which we
20 were talking about earlier -- "Brooke, have you been
21 getting mobile alerts from American Eagle?"

22 And she said, "Yes." And she goes, "But,
23 mom, I told you, I turn off my mobile alerts."

24 And I said, "Okay."

25 So she immediately got on her computer,

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1 logged into her rewards, which she had to go find
2 her password, because she doesn't ever log in. But
3 she wanted to prove to me, because she knows how
4 upset I get, upset over this stuff. I mean, I look
5 at it as, the kids are driving, they shouldn't be
6 texting, period, that kind of thing. And so I was
7 making sure. And she sent me a picture of her
8 screen shot, because she had turned off her mobile
9 alerts.

10 Then she sent me how many text messages --
11 she's like, I've got texts dated back to December
12 25, 2015. And that's what she sent me.

13 Q. Okay. So she sent you a screen cap? So
14 she sent you a screen cap of her account?

15 A. Yeah.

16 Q. And mobile alerts, it says she's selected
17 none?

18 A. None, correct.

19 Q. Okay.

20 A. So then I couldn't yell at her.

21 Q. I would like to ask you about your
22 Whirlpool washer. Did you have any problems with
23 the Whirlpool washer?

24 A. Yeah. It didn't work, so I had to get rid
25 of it. It just broke down. And I had my plumber

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1 come over. And he said, yeah, these are a piece of
2 junk, basically. So I ended up replacing it with a
3 Bosch.

4 Q. And you bought it during the class period
5 that was relevant in the case?

6 A. Yes.

7 Q. And you believed yourself to be a class
8 member?

9 A. Yes.

10 Q. But when you went to retrieve documentation
11 from storage, you could not find it?

12 A. Couldn't find it, yeah.

13 MR. ISAACSON: I have no further
14 questions.

15 MS. McENTEE: I don't either.
16 Richard, do you have any more
17 questions?

18 MR. VICTORIA: No. That's all.

19 MS. McENTEE: Okay. Thank you
20 very much for your time.

21 THE WITNESS: Thanks.

22 MS. McENTEE: So what's normal, is
23 to take the deposition transcript and review it and
24 make any changes if mistakes were made.

25 THE WITNESS: Okay.

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1 MS. McENTEE: So can we go ahead
2 and send that to your attorney, and he'll arrange to
3 send that to you?

4 THE WITNESS: Yes.

5 (Deposition concluded.)

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JURAT

I, KARA BOWES, do hereby state under oath
that I have read the above and foregoing deposition
in its entirety and that the same is a full, true
and correct transcription of my testimony so given
at said time and place, except for the corrections
noted.

KARA BOWES

Subscribed and sworn to before me, a Notary
Public in and for the State of Oklahoma, by said
witness, KARA BOWES, on this ____ day of _____,
20__.

Notary Public

My Commission Expires:_____

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1 ERRATA SHEET

2 I, KARA BOWES, in Oklahoma City, Oklahoma, Oklahoma
3 County, Case No. 1:14-cv-02440-VEC desire to make
4 the following corrections:

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PAGE	LINE	CORRECTION
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KARA BOWES

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1 C E R T I F I C A T E

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4 STATE OF OKLAHOMA)
) SS:
5 COUNTY OF OKLAHOMA)

6

7 I, Jill A. Resetar, a certified shorthand
8 reporter within and for the State of Oklahoma,
9 certify that KARA BOWES was by me sworn to testify
10 the truth; that the deposition was taken by me in
11 stenotype and thereafter transcribed by computer and
12 is a true and correct transcript of the testimony of
13 the witness; that the deposition was taken on JUNE
14 14, 2017, at 11:02 a.m., at 914 N. Broadway, Suite
15 210, Oklahoma City, Oklahoma; that I am not an
16 attorney for or a relative of either party, or
17 otherwise interested in this action.

18 Witness my hand and seal of office on the
19 20th day of June 2017.

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Jill A. Resetar, CSR
for the State of Oklahoma
CSR # 01734

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